

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

***ENERGY FACILITY SITING BOARD***

**DRAFT Minutes of Open Meeting Held June 2, 2016 1:00 PM**

**Board Members Present:** Margaret E. Curran, Janet L. Coit, Parag Agrawal

**Board Staff Present:** Todd Bianco, Coordinator; Patricia Lucarelli, Board Counsel;  
Susan Forcier, DEM Counsel

**Chairperson Curran called the meeting to order at 1:10 PM in Hearing Room A of the Public Utilities Commission offices building. A quorum of the Energy Facility Siting Board (Board) was present.<sup>1</sup>**

Chairperson Curran introduced herself, Director Coit, and Associate Director Agrawal. Chairperson Curran explained that public comment would not be heard and that the Board would now discuss, deliberate, and decide on outstanding matters described in the open meeting notice.

The first item of business was approval of the minutes of the Board's open meeting held on January 29, 2016. Chairperson Curran asked for any amendments to the draft minutes. Dr. Bianco and Director Coit noted two separate typographical errors on page two of the draft minutes, and offered corrections. Director Coit then offered a correction that on page four the Federal Freshwater Wetlands Act be changed to State Freshwater Wetlands Act. Director Coit also noted that references to licenses necessary pursuant to the Federal Clean Air Act and Federal Clean Water Act should be changed to licenses necessary "pursuant to State law and Federal" Clean Air and Clean Water Acts. After hearing no further corrections, Chairperson Curran asked for agreement that the amended draft minutes be accepted by acclamation. Director Coit agreed. Associate Director Agrawal abstained, as he was not present at the January 29, 2016 open meeting. **Draft minutes approved by acclamation.**

Chairperson Curran introduced the next item of business: motions filed in Docket No. SB-2015-06 – Invenergy Thermal Development LLC's (Invenergy) Application to Construct the Clear River Energy Center Power Plant in Burrillville, Rhode Island. Counselor Lucarelli indicated there were three pending motions to rule on, followed by a discussion regarding the status of advisory opinions.

Motion for an Evidentiary Hearing on Motion to Intervene filed by Lyle and Erin Walker. Chairperson Curran asked if there were comment regarding the motion, and both Director Coit and Associate Director Agrawal replied they did not have any comments. Chairperson Curran asked for a motion, and Associate Director Agrawal moved to deny the Walkers' motion. Director Coit seconded. The Board denied the Walkers' motion for an evidentiary hearing. **Vote 3-0.**

A member of the public asked that the motion be repeated because he could not hear it. Associate Director Agrawal repeated his motion to deny the Walkers' motion for an evidentiary hearing. Chairperson Curran noted the motion was seconded.

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<sup>1</sup> A stenographer was present to record the meeting. Please contact Allied Court Reporters at 888-443-3767 for a copy.

Mr. Nicholas Gorham, representing the Walkers, asked the Board to confirm the Board was not hearing testimony or argument at the meeting. Chairperson Curran confirmed.

For the benefit of the public that may not have heard the original vote, the Board re-counted their 3-0 vote to deny the Walkers' motion for an evidentiary hearing.

Motion for Late Intervention Filed by Lyle and Erin Walker. The Board discussed the merits of the Walkers' motion for late intervention. Director Coit noted that the Walkers' motion was timely with respect to the final hearings. Director Coit noted that properties and households were unique, and although there were already intervenors raising similar issues raised in the Walkers' motion, she found that the Walkers had met the standard required. Associate Director Agrawal expressed he felt the Walkers' interests would already be represented by existing parties. Chairperson Curran agreed with Associate Director Agrawal, adding that the analysis for previous motions to intervene, as applied to the Walkers' motion, led her to the opinion that the Walkers do not present a sufficiently distinct position.

Chairperson Curran asked for a motion. Associate Director Agrawal moved to deny the Walkers' motion for late intervention. Chairperson Curran seconded. The Board denied Lyle and Erin Walker's motion for late intervention. Agrawal and Curran voted for Agrawal's motion to deny; Coit voted to oppose. **Vote 2-1.**

Motion to Intervene Filed by David B. Harris. The Board members discussed the merits of the Mr. Harris' motion and expressed agreement that the movant sufficiently identified a direct interest not adequately represented by an existing party. Associate Director Agrawal moved to approve Mr. Harris' motion to intervene. Director Coit seconded. The Board approved David B. Harris' Motion to Intervene. **Vote 3-0.**

Discussion on the Status of Advisory Opinions in Docket SB-2015-06 Invenenergy Clear River Energy Center. Chairperson Curran directed staff to introduce themselves for the record and to provide a status update on Designated Agencies' advisory opinions to prompt the Board's discussion. Board Counsel Lucarelli, DEM Counsel Forcier, and Board Coordinator Bianco identified themselves. Dr. Bianco explained that he had spoken to staff at the twelve designated agencies prior to the open meeting and could provide the following status updates:

- The Burrillville Tax Assessor would be employing a property tax consultant to provide an advisory opinion to the Board, and that the advisory opinion was expected to be on time.
- The Burrillville Planning Board is in the process of first rendering an advisory opinion to the Burrillville Zoning Board. After receiving a decision back from the Zoning Board, the Planning Board will finish its advisory opinion to the Siting Board. Planning Board and Zoning Board hearings were expected on June 20, 2016, and July 12, 2016, respectively, and the Planning Board's advisory opinion is expected on time.
- The Burrillville Zoning Board process was tied in with the Planning Board process, and would include hearings with testimony before the Zoning Board.
- The Burrillville Building Inspector would file an advisory opinion on time.
- The Pascoag Utility District expects to file an advisory opinion on time, and would rely on an expert consultant to do so. The advisory opinion depended on receiving information on water withdrawal that is also related to DEM authority and DEM's advisory opinion.
- The RI Public Utilities Commission is using its normal hearing process to render an advisory opinion, and the advisory opinion is expected to be filed on time.

- The RI Office of Energy Resources is engaging a consultant to render an advisory opinion, and using a workshop process to hear public comments on the advisory opinion before finalizing and filing the advisory opinion. The workshop would be conducted sometime in July 2016 upon thirty-day notice to the public.
- The RI Department of Health will employ its hearing process for regulations to render an advisory opinion, and the advisory opinion is expected on time.
- The RI Historical Preservation and Heritage Commission indicated that the Commission has already begun its review process and expects to file an advisory opinion on time.
- The RI Statewide Planning Program is using a variant of State Planning Council Rule Three to render an advisory opinion. In this case, Planning will draft the advisory opinion, distribute it to the Council, provide a period for the Council to register any concerns with the draft, and discuss and finalize the draft at a regularly scheduled Council meeting. A letter the Board had been copied on from Planning to the Town of Burrillville that indicated there was no formal hearing process or means of providing input into Planning's advisory opinion.
- The RI Department of Transportation indicated in a letter to the Town of Burrillville (copying the Board), dated May 24, 2016, that Transportation had not received applications for the two permits the applicant would require per the Board's Preliminary Order. Transportation also indicated to Board staff that these permits required a minimum of three months to review, and that Transportation could not indicate at this time if the advisory opinions could be filed on time.
- RI Department of Environmental Management (DEM) was asked to provide an advisory opinion on five issues. DEM was not conducting an open process to render the advisory opinions, and expected to make witnesses available for the Board's hearings. With regard to oil storage, DEM had issued data requests in the Board's docket. With regard to the Pascoag well, DEM expects to seek additional information through the Board's docket, but that some information might not be possible to obtain because of a court order that may limit well testing. With regard to wildlife and habitat, these advisory opinions were closely related to wetlands permits not under the Board's jurisdiction and that were not yet filed by the applicant with DEM. DEM feels this lack of information could provide a difficult timeline in rendering an advisory opinion to the Board. With regard to the Clean Power Plan and Regional Greenhouse Gas Initiative, DEM expects no issues in addressing these matters. Regarding the overall environmental impact, DEM indicated that they were not preparing a document that would resemble an Environmental Impact Statement or Document that the Board has seen in previous dockets, but that DEM's advisory opinion would consider all existing regulations.

Director Coit asked staff to make sure hearings and public meetings at the Designated Agencies appear on the Board's webpage. Director Coit then recounted that as a Board Member, she was not leading DEM's advisory opinion process. Further, she indicated that she would like to present an expansion of the advisory opinion put to DEM, and would make a motion to amend or add an addendum to the Preliminary Order.

Director Coit outlined three issues to expand in DEM's advisory opinion. The first was an opinion on the impacts of the facility specifically on State conservation priorities, the second was on the impacts to public recreation on State-owned lands, and the third was to include cumulative impacts to the environment, with reference to other facilities in close proximity to the proposed site.

Chairperson Curran expressed that she had similar feelings about clarifying the intended extent of DEM's advisory opinion.

Associate Director Agrawal concurred, and asked for an explanation on which agencies were looking into impacts to water resources. Director Coit and Dr. Bianco recounted that Health, DEM, and Pascoag all had advisory opinions regarding water resources.

Chairperson Curran asked Director Coit for her proposed language. Director Coit recited that the DEM advisory opinion be expanded to include impacts on State conservation priorities, especially impacts to rare species; impacts to public recreation and State conservation lands and DEM management areas; and the cumulative impacts of the facility given the close proximity to the existing Ocean State Power Plant and Algonquin gas pipeline compressor station. Chairperson Curran agreed, and asked for a motion. Director Coit moved to expand DEM's designated advisory opinion as outlined. Associate Director Agrawal seconded. The Board approved expanding DEM's designated advisory opinion. **Vote 3-0.**

Chairperson Curran asked for any other discussion. Director Coit referenced public comment and the staff's status update about a court order regarding the closure of the Pascoag well, and added that she would like to take administrative notice of the order. Counselor Lucarelli indicated that the Board could take administrative notice of the order. Director Coit moved to take administrative notice of the court order effecting the closure of the Pascoag well. Associate Director Agrawal seconded. The Board took administrative notice of the court order. **Vote 3-0.**

Director Coit then reminded the public about useful fact sheets regarding the docket and the Board's authority that were prepared by Board staff. Chairperson Curran also noted the usefulness of the fact sheets.

Director Coit then asked about the timing of future public comment hearings. Dr. Bianco responded that they would be likely scheduled between September 10 and October 10, 2016. After Director Coit noted a lull in Board activity in the docket, Dr. Bianco added that any future public hearings would be noticed in the Providence Journal, a local paper, the Bargain Buyer, the Board's website, and the Secretary of State's website.

The Board and staff then discussed that advisory opinions were expected by September 12, 2016, and would be posted on the Board's webpage soon after they were filed. Chairperson Curran then expressed that the public could benefit from a Board Twitter account. Director Coit agreed.

Director Coit moved to adjourn. Associate Director Agrawal seconded, and the meeting was adjourned. **Vote 3-0.**

**The open meeting adjourned at 2:00 PM.**